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No. 80-1810

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

VALMAS BROTHERS SHIPPING, S.A. and
VALSKY MARITIME, LTD.,
Petitioner,

versus

JACK FISHER, ETC. and
EUGENIA KEPESSIDIS, Individually, Etc.,
Respondents.

On Writ of Certiorari to
The United States Court of Appeals
For the Fifth Circuit

OPPOSITION TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

I. Whether findings of fact by a District Court that two foreign corporations' substantial source of revenue was derived from United States grain transportation, that said corporations maintained a substantial base of operations in the United States of America, and that the respondents' decedent was specifically hired and transported to the United States to work on said corporations' vessel in the United States, are such facts to justify application of United States law to said foreign corporations pursuant to the teachings of *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, Reh. Den., 400 U.S. 856 (1970).

II. Whether findings of fact by a District Court that two foreign corporations maintained a substantial base of operations in the United States of America, and derived substantial revenue from United States trade, freight and charger hire, such that United States substantive law is to govern a controversy pursuant to *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306 Reh. Den., 400 U.S. 856 (1970) can be defeated by an adhesion contract with respondents' decedent specifying the application of the law of a foreign country to any controversy between the employer and his seaman employees.

III. Whether findings of fact by a District Court that two foreign corporations had a substantial base of operations in the United States of America and derived substantial revenue from United States trade, freight and charter hire, such that the law of the United States is to apply to a controversy pursuant to *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, Reh. Den., 400 U.S. 856 (1970), presents any new policy considerations for review by this Court.

IV. Whether the decision below is in conflict with the decisions of this Court.

V. Whether the decision below is in conflict with the decisions of the Fifth Circuit Court of Appeals.

VI. Whether the decision below is in conflict with the decisions of other Courts of Appeals.

VII. Whether the peculiar facts of this case, given that the substantive law of the United States would have been applied in any event pursuant to either Greek or Liberian law, are such that make this matter an appropriate vehicle for this Court's review of the issues presented.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 2

JURISDICTION 2

STATUTE INVOLVED 3

STATEMENT OF THE CASE 3

ARGUMENT 5

I. Certiorari Should Be Denied In This Case Because Findings Of Fact By The Trial Court With Affirmation By The Fifth Circuit That The Two Foreign Corporations Maintained A Substantial Base Of Operations In The United States And Derived Substantial Revenue From United States Trade Are Such Findings So As To Justify Application Of United States Law To This Controversy 5

II. Certiorari Should Be Denied In This Case Because A Seaman's Employment Contract Not Negotiated At Arm's Length Cannot By Its Terms

TABLE OF CONTENTS (Continued)

Page

Defeat The Otherwise Proper Application Of United States Law To A Controversy And Divest A United States District Court Of Otherwise Proper Jurisdiction 10

III. Certiorari Should Be Denied In This Case Because There Are No Valid Policy Reasons Existing To The End That The Law Of The United States Ought Not Be Applied To A Liberian And Panamanian Corporation Maintaining A Substantial Base Of Operations In The United States And Deriving Substantial Revenue From United States Trade On The Basis Of Greek Law 11

IV. Certiorari Should Be Denied In This Case Because The Decision In The Court Below Does Not Conflict With The Decisions Of This Court 13

V. Certiorari Should Be Denied In This Case Because The Decision In The Court Below Does Not Conflict With The Decisions Of The Fifth Circuit 15

VI. Certiorari Should Be Denied In This Case Because The Decision In The Court Below Does Not Conflict With The Decisions Of Other Courts Of Appeals 17

TABLE OF CONTENTS (Continued)

Page

VII. Certiorari Should Be Denied In This Case Because The Peculiar Facts Herein Would Warrant The Application Of United States Law In Any Event Pursuant To Either Greek Or Liberian Legal Principles And This Case Is Thereby An Inappropriate Vehicle With Which To Analyze The Issues Presented 20

CONCLUSION 24

CERTIFICATE OF SERVICE 26

TABLE OF AUTHORITIES

Cases:

Avila v. M/V TOLUCA, 636 F.2d 1107, 1112 (5th Cir. 1980) 15

Bartholomew v. Universe Tankships, Inc., 263 F.2d 437 (2nd Cir. 1959) 12

Blanco v. Phoenix Compania de Navegacion, S.A., 304 F.2d 13 (4th Cir. 1962) 10

Chirinos de Alvarez v. Creole Petroleum Corp., 613 F.2d 1240 (3rd Cir. 1980) 19

Conte v. Flota Mercante, 277 F.2d 664 (2nd Cir. 1960) 24

De Mateos v. Texaco, Inc., 562 F.2d 895 (3rd Cir. 1977) 18

TABLE OF AUTHORITIES (Continued)

Page

Dresser Industries v. Fidelity & Cas. Co. of N.Y., 580 F.2d 806 (5th Cir. 1978) 7

Fisher v. AGIOS NICOLAOS V, 628 F.2d 308, Reh. Den., 636 F.2d 1107 (1981) 7,16

Fitzgerald v. Liberian S/T CHRYSSI P. GOULANDRIS, 582 F.2d 312 (4th Cir. 1978) 7,19,20

Gkiafis v. S/S YIOSONAS, 387 F.2d 460 (4th Cir. 1967) 24

Hellenic Lines, Ltd. v. Rhoditis, 398 U.S. 306, 26 L.Ed.2d 252, 90 S.Ct. 1731 (1970) ..... *passim*

Kearney v. Savannah Foods and Industries, Inc., 350 F.Supp. 85 (S.D. Ga. 1972) 23

Koupetoris v. Konkar Intrepid Corp., 535 F.2d 1392 (2nd Cir. 1976) 18

Lauritzen v. Larsen, 345 U.S. 571, 97 L.Ed. 1254, 73 S.Ct. 921 (1953) 6,8,9,14,17,18,24

Merren v. A/S BORGESTED, 519 F.2d 82 (5th Cir. 1975) 15

Morewitz v. Andros Compania Maritima, S.A., 614 F.2d 379 (4th Cir. 1980) 19

Nunez-Lozano v. Oivind Lorentzen Rederi, 634 F.2d 135 (5th Cir. 1980) 16

Perez v. Omnium Trader, 174 F.Supp. 876 (D.C. La. 1959) 22

TABLE OF AUTHORITIES (Continued)

Page

Retzekas v. Vygla S.S. Co., 193 F.Supp. 259 (D. R.I. 1961) 10

Romero v. International Terminal Operating Co., 358 U.S. 354, 3 L.Ed.2d 368, 70 S.Ct. 468 (1959) ..13,24

Tamboris v. Kainis Compania Maritima, S.A., 439 F.2d 1131 (5th Cir. 1971) 16

U.S. v. U.S. Gypsum Co., 333 U.S. 364, 92 L.Ed. 746, 68 S.Ct. 525 (1948) 7

United States Statutes:

28 U.S.C. §1254(1) 3

28 U.S.C. §1292(a)(3) 20

28 U.S.C. §1292(b) 20

46 U.S.C. §688 3

Other Sources:

Gilmore and Black, *The Law of Admiralty* 478 (2nd ed. 1975) 22

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VALMAS BROTHERS SHIPPING, S.A. and
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On Writ of Certiorari to
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For the Fifth Circuit

OPPOSITION TO PETITION FOR CERTIORARI

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Jack Fisher and Eugenia Kepessidis, the respondents herein, pray that the Petition for Writ of Certiorari issued to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this matter on October 10, 1980, be denied. The United States Court of Appeals for the Fifth Circuit denied petitioners' Petition for Rehearing En Banc on January 28, 1981.

OPINIONS BELOW

The October 10, 1980, opinion of the Court of Appeals, whose judgment is sought to be reviewed, is reported at 628 F.2d 308, and is reprinted in the separate Appendix accompanying the Petition (Appendix, p. 1). The January 28, 1981, order of the Court of Appeals denying petitioners' Petition for Rehearing En Banc is reported at 636 F.2d 1107, and is reprinted in the separate Appendix filed with the Petition (Appendix, p. 27). The prior decrees and orders of the United States District Court for the Eastern District of Texas (of November 28, 1977; October 11, 1978; and December 6, 1978) are unreported. They are set forth in the separate Appendix filed with the Petition (Appendix, pp. 48, 53 and 72, respectively).

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on October 10, 1980. A Petition for Rehearing En Banc was denied on Janu-

ary 28, 1981. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTE INVOLVED

46 U.S.C. §688, commonly referred to as the "Jones Act", is reproduced verbatim in the Petition (Petition, pp. 2-3).

STATEMENT OF THE CASE

For convenience and ease of identification, the defendants in the District Court will be referred to herein as petitioners. Plaintiffs in the District Court, Jack Fisher and Eugenia Kepessidis, will be referred to herein as respondents.

Petitioners seek certiorari to review a decision and opinion of the United States Court of Appeals, Fifth Circuit, which upheld findings of fact made by the District Court that petitioners maintained a substantial base of operations in the United States and additionally derived substantial revenue from United States trade, freight and charter hire, so as to warrant application of United States substantive law, 46 U.S.C. §688, to a controversy involving the death of one of their seaman employees who was killed aboard their only vessel in Beaumont, Texas, on June 1, 1976.

Petitioner, Valsky Maritime, Ltd., is a Liberian corporation whose only asset was the M/V AGIOS NICOLAOS V, the vessel involved in the death sued upon. The ship was operated at the time of the accident by Valmas Brothers Shipping, S.A., a Panamanian cor-

poration. Both corporations are legitimate corporations in the countries of their respective domiciles [Appendix, p. 105). The vessel in question had never been to Greece, Liberia or Panama, prior to the accident. After its purchase by petitioner, Valsky Maritime, Ltd., from a Swedish Company, the vessel made a transatlantic voyage from its port of delivery in Cadiz, Spain, to Beaumont, Texas, *empty*, simply to conduct its business with grain interests in the area and prepare the ship to be put into service.

Respondents' decedent, Dimitrios Kepessidis, was specifically hired to join the vessel in the Port of Beaumont, Texas, and take charge of sea readiness operations of the vessel as Chief Engineer. He was transported at his employer's expense to Beaumont, Texas, and joined the vessel on May 22, 1976. The entire tenure of the decedent's service aboard the vessel was in Beaumont, Texas, and it was not until June 1, 1976, that the decedent was killed while attempting to service a boiler on the vessel.

The action in the District Court was initiated by complaint filed *in personam* and *in rem* on behalf of the survivors of Dimitrios Kepessidis. The vessel was seized in the Eastern District of Texas in August, 1976, and a letter of undertaking was posted for security. Preliminary motions to dismiss on the basis of *forum non conveniens* were filed by petitioners and denied by the Trial Court judge in written reasons on November 28, 1977. Trial depositions were taken in this matter by all

parties, some necessitating a trip to Greece, and the case proceeded to trial on December 7, 8 and 12, 1977. Thereafter, judgment was rendered in favor of respondents on December 6, 1978. The judgment of the District Court was affirmed by the United States Court of Appeals for the Fifth Circuit on October 10, 1980, and on January 28, 1980, a request for Rehearing En Banc was denied.

ARGUMENT

I.

Certiorari Should Be Denied In This Case Because Findings Of Fact By The Trial Court With Affirmation By The Fifth Circuit That The Two Foreign Corporations Maintained A Substantial Base Of Operations In The United States And Derived Substantial Revenue From United States Trade Are Such Findings So As To Justify Application Of United States Law To This Controversy.

The decision in the Court below is in direct conformity with the decision of this Court in the Case of *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, Reh. Den., 400 U.S. 856 (1970). In *Hellenic Lines, Ltd., supra*, this Court held that a shipowner's base of operations is a "factor of importance in determining whether the Jones Act is applicable; and there well may be others".[1] The Trial Court below, after "an analysis of all relevant factors", specifically found that "[t]he defendants have a sub-

1 398 U.S. 309.

stantial base of operations in the United States and derive substantial revenue from United States trade, freight and charter hire". [Appendix to the Petition, pp. 68-69]. After a second full review of all of the relevant facts underlying this controversy, the Court of Appeals below found no reversible error in the factual findings by the Trial Court that the vessel in question had a substantial United States base of operations and derived substantial revenues from United States trade. The Court of Appeals below found that, from its analysis of the facts, the Trial Court could have reasonably found that the vessel involved in this accident had been specifically purchased for the purpose of servicing United States grain trade.[2] Thus, both the factual findings by the Trial Court and the analysis of those findings by the Court of Appeals below clearly placed this case within the rule of *Hellenic Lines, Ltd., supra,* in the application of United States law to foreign shippers maintaining a substantial base of operations in the United States. Neither the Trial Court nor the Court of Appeals below espoused any novel test for the application of United States law, and in fact used *Hellenic Lines, Ltd., supra,* specifically as the guide in deciding this controversy.

Although petitioners argue that this case is in conflict with the decisions of this Court, and specifically *Hellenic Lines, Ltd., supra,* and *Lauritzen v. Larsen,* 345 U.S. 571 (1953), as the Court of Appeals below noted the real dispute petitioners have in this case involves a dis-

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2 628 F.2d 318.

agreement with the facts found by the Trial Court. The Court of Appeals below noted:

> The district court's determination that a shipowner has or has not a substantial base of operations in the United States is a factual finding that should not be disturbed on review unless clearly erroneous. *Fitzgerald v. Liberian S/T Chryssi P. Goulandris*, 582 F.2d 318, 315 (4th Cir., 1978). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746 (1948); *Dresser Industries v. Fidelity & Cas. Co. of N.Y.*, 580 F.2d 806, 807 (5th Cir., 1978).[3]

The evidence adduced at trial clearly justified a finding by the Trial Court supportive of the application of United States law. Although petitioners classify the AGIOS NICOLAOS V, as one of the group of so called tramp vessels, "ones who take their cargo from and to ports anywhere in the world as they are directed to do by those who charter the vessel" [Petition p. 9, note 3], in fact the evidence adduced at trial showed that immediately after purchase of the vessel and preliminary steps to make it seaworthy, the vessel was transported

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3 628 F.2d 318. The specific holding of the Court of Appeals below was that there was no reversible error found in the factual findings by the Trial Court.

empty on an expensive transatlantic voyage from Cadiz, Spain, to Beaumont, Texas, to begin its business operations. Thereafter, the decedent was specifically hired and transported to Beaumont, Texas, to work on the vessel and prepare it for sea in that port. The vessel did not immediately take on cargo in Beaumont, Texas, with an eye toward immediate transportation, but engaged in operational and business activities in that port for what would have been an extended period of time for a so called tramp vessel. Representatives of petitioners admitted in deposition that they hired the customary agents to look after the cargo operations, but also engaged special agents to look after the shipowner's interests.

Arguing with the factual findings by the Trial Court, petitioners reinterpret this evidence and rather cavalierly state that all of the evidence and facts presented at trial simply add up to the conclusion that the only contact petitioners had with United States in this matter was the "place of injury". Petitioners point to the list of factors discussed by this Court in *Lauritzen, supra,* and argue that respondents quantitatively failed to meet the test for application of United States law. However, just such a quantitative analysis of choice of law contacts has been rejected by this Court in *Hellenic Lines, Ltd., supra.* This Court in *Hellenic Lines, Ltd., supra,* held that rather than quantitatively assessing the *Lauritzen* factors the proper test is a qualitative one con-

sidering all of the evidence, and this is most particularly important with regard to the base of operations contact. As the Court of Appeals below noted, had this Court intended a mechanical application of *Lauritzen, supra,* the plaintiff in *Hellenic Lines, Ltd., supra,* would not have prevailed. Notwithstanding this context, petitioners rhetorically state the vessel in this case made only one trip to the United States before the accident. While the fact that the voyage to Beaumont, Texas, in this case, was the maiden voyage of the vessel is irrelevant for purposes of a quantitative analysis that petitioners favor, the fact that said voyage took place in the manner in which it did with the concommitant United States contacts was very significant in the mind of the Trial Court in analyzing the facts of this case and the projection of pattern for conduct on the part of the employers of the decedent.

The case at bar is the result of a detailed finding of facts by the Trial Court below after a full trial on the merits, specifically utilizing *Hellenic Lines, Ltd., supra,* as its guide in the choice of law question. Recognizing that the finding of facts by the Trial Court ought not be disturbed absent clear error, the Court of Appeals below again analyzed the record and found no reversible error. Now, petitioners take their factual dispute before this Court for yet a third review. Certiorari ought be denied.

II.

Certiorari Should Be Denied In This Case Because A Seaman's Employment Contract Not Negotiated At Arm's Length Cannot By Its Terms Defeat The Otherwise Proper Application Of United States Law To A Controversy And Divest A United States District Court Of Otherwise Proper Jurisdiction.

As did the plaintiff seaman in *Hellenic Lines, Ltd., supra,* the decedent in the case at bar was a signatory to an employment contract at the time of his death which would conventionally apply the laws of the Republic of Greece and the forum of a Greek Court to any controversy involving the seaman and his employer. As this Court in *Hellenic Lines, Ltd., supra,* implicitly held, such a contract can in no way impair the application of United States law to a controversy pursuant to a factual finding that would otherwise apply United States law to said controversy. The Court of Appeals below, again following *Hellenic Lines, Ltd., supra,* dismissed this argument urged now by petitioners.[4] The significance *vel non* of such an employment contract has also been discussed from time to time in the lower courts. *See e.g., Blanco v. Phoenix Compania de Navegacion, S.A.*, 304 F.2d 13 (4th Cir. 1962) and *Retzekas v. Vygla S.S. Co.*, 193 F.Supp. 259 (D. R.I. 1961).

Specific facts of this case make such an employment contract additionally irrelevant. Although the con-

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4 628 F.2d 316, note 13.

tract provides for adjudication in a Greek forum, neither petitioners are Greek corporations. At the trial of this matter, expert testimony revealed that although respondents would have theoretically had a cause of action which could have been urged in the courts of Greece, a Greek forum is not accessible to this controversy because under Greek law the domicile of the corporation (not that of the stockholders) determines personal jurisdiction, and an agreement between parties to confer jurisdiction on Greek Courts is not enforceable in Greece.[5]

III.

Certiorari Should Be Denied In This Case Because There Are No Valid Policy Reasons Existing To The End That The Law Of The United States Ought Not Be Applied To A Liberian And Panamanian Corporation Maintaining A Substantial Base Of Operations In The United States And Deriving Substantial Revenue From United States Trade On The Basis Of Greek Law.

The policy considerations underlying the issues presented in the case at bar were very clearly stated by this Court in the case of *Hellenic Lines, Ltd., supra:*

> We see no reason whatsoever to give the Jones Act a strained construction so that this alien

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5 This matter was discussed in the Court of Appeals below. *See*, 628 F.2d 317, notes 14 & 15.

> owner, engaged in an extensive business operation in this country, may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibility of a Jones Act "employer". The flag, the nationality of the seaman, the fact that his employment contract was Greek, and that he might be compensated there are in the totality of the circumstances of this case minor weights in the scales compared with the substantial and continuing contacts that this alien owner has with his country. If, as stated in *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437, the liberal purposes of the Jones Act are to be effectuated, the facade of the operation must be considered as minor, compared with the real nature of the operation and a cold objective look at the actual operational contacts that this ship and its owner have with the United States.[6]

Petitioners argue that the Trial Court and the Court of Appeals below imposed United States law on petitioners simply because the place of injury was in the United States and, as prophets of doom, petitioners foresee the floodgates of litigation now open with no substantive principles to guide the lower courts, but neither assertion is on point with this case. The Court of Appeals below specifically stated that the place of wrongful act alone is an insufficient factor upon which

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6 398 U.S. 310.

to base the retention of United States jurisdiction.[7] The substantive principles relied on by the Trial Court and the Court of Appeals below came from this Court's decision in *Hellenic Lines, Ltd., supra.* The so called floodgates through which petitioners have found themselves cast in judgment are open no wider now than they were a decade ago, and certiorari ought be denied in this case.

IV.

Certiorari Should Be Denied In This Case Because The Decision In The Court Below Does Not Conflict With The Decisions Of This Court.

As is clear from the record in this case, both the Trial Court and the Court of Appeals below adopted as their guideline this Court's decision in *Hellenic Lines, Ltd., supra,* in the historical context of both *Romero v. International Terminal Operating Co.,* 358 U.S. 354 (1959) and *Lauritzen, supra.* Although this Court in *Hellenic Lines, Ltd., supra,* has suggested that other factors than those outlined in this historical trilogy could serve as the basis for application of United States law in this context[8], the Courts below adopted no new principles in the application of law problem, neither yet were any new expansive interpretations of the case law espoused. The Trial

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7 628 F.2d 713, note 17.

8 398 U.S. 309.

Court and Court of Appeals below utilized the decisions of this Court as they must be utilized, as guides in applying the facts of a specific case.

In exhausting detail, petitioners compare their interpretation of the facts in the case at bar with those facts presented in *Lauritzen, supra,* and *Hellenic Lines, Ltd., supra,* to the end that petitioners argue that the Courts below erred in applying United States law to this case because the exact fact circumstances of *Lauritzen, supra,* and *Hellenic Lines, Ltd., supra,* can be distinguished from those in the case at bar, but in so arguing petitioners fail to recognize that in rendering these decisions this Court was setting forth guidelines for the lower courts to follow in making their own factual analyses in choice of law questions rather than setting forth an exclusive list of fact circumstances pursuant to which the lower courts would have to find parallels in order to apply United States law. The facts of every case will differ, and as aforementioned the facts of *Hellenic Lines, Ltd., supra,* so drastically differed from those presented in *Lauritzen, supra,* that the former case would have failed to meet the analytical burden of the latter case if a quantitative approach had been taken. Simply because petitioners contest the findings of fact below that they maintained a substantial base of operations in the United States and derived substantial revenue from United States trade is not a valid reason for the granting of certiorari herein.

V.

Certiorari Should Be Denied In This Case Because The Decision In The Court Below Does Not Conflict With The Decisions Of The Fifth Circuit.

Although petitioners would have it otherwise, a settled and consistent rule of the Fifth Circuit, of which the case below exemplifies, is that a finding by a District Court that a shipowner has or has not a substantial base of operations in the United States and does or does not derive substantial economic benefit from operations in the United States is a factual finding which ought be made by the Trial Court in light of all of the evidence, and will not be disturbed on appeal absent a finding that the Trial Court was "clearly erroneous". Far from conflicting, the Fifth Circuit cases cited by petitioners are consistent examples of this logical appellate attitude toward factual findings in this area.

The case of *Merren v. A/S BORGESTED*, 519 F.2d 82 (5th Cir. 1975), was a case which presented absolutely no evidence of a United States base of operations for the Norwegian defendant, nor a substantial source of revenue for the shipowner with regard to United States trade. The Court of Appeals noted that the only point of contact in the entire controversy with the United States was in the mere fact that an employment contract had been signed in a United States port, and the Court quite properly rejected any jurisdictional claim made by plaintiff. Likewise, the case of *Avila v. M/V TOLUCA*, reported at 636 F.2d 1107, 1112 (5th Cir. 1980), demonstrates no inconsistency supportive

of petitioners' argument. Although the case was simply a Per Curiam affirmation of a District Court's order adopting a recommendation of a United States Magistrate, the opinion is supportive of the Fifth Circuit philosophy in this matter. While noting that evidence of substantial income being derived from cargo either terminating or originating in the United States is indicative of a base of operations finding, the opinion notes, as does the opinion of the Court of Appeals below in the case at bar, that a mere fortuitous situs of accident in the United States (here, in the state of Maryland) is no case for application of United States law. The court specifically noted that this was not a flag of convenience case.[9]

Likewise, petitioners should find little support in the case of *Nunez-Lozano v. Rederi*, 634 F.2d 135 (5th Cir. 1980), which case cited as support the case below, *Fisher v. AGIOS NICOLAOS V*, 628 F.2d 308 (5th Cir. 1980). In *Nunez-Lozano, supra*, while citing the findings of fact by the trial judge and noting no reversible error, the Fifth Circuit noted that the only contact with the United States was the mere fact that the seaman in question signed a contract in the United States. The Fifth Circuit affirmed dismissal on *forum non conveniens* grounds. The short Per Curiam opinion in *Tamboris v. Kainis Compania Maritima, S.A.*, 430 F.2d 1131 (5th Cir. 1971), did

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9 636 F.2d 1112.

not discuss in detail the base of operations approach to the choice of law question, and the Fifth Circuit apparently did not re-analyze the facts found by the District Court, but the Court did note the District Court's evaluation of the case under *Lauritzen, supra* and *Hellenic Lines, Ltd., supra,* principles.

Although petitioners cavalierly charge the Fifth Circuit with "blatant disregard of their judicial obligations"[10] of late in reviewing the decisions of the various trial courts on choice of law questions, it does not, as petitioners suggest, take the "wildest imagination"[11] to either distinguish each of the foregoing cases from each other and the case at bar, or to see with absolute clarity that the Fifth Circuit has consistently reviewed each appeal in this area on a case by case basis and has not cast away the factual findings by the Trial Court absent clear error.

VI.

Certiorari Should Be Denied In This Case Because The Decision In The Court Below Does Not Conflict With The Decisions Of Other Courts Of Appeals.

Arguing that numerical "calls" in American ports is in some way significant with regard to the case below,

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10 Petition, p. 13.

11 Petition, p. 12.

petitioners cite five cases from other Courts of Appeals which, with one exception, involve a denial of the application of United States law to a controversy in the context of a fact situation involving numerous calls of the respective vessels to United States ports, but either on this basis or the basis of other criteria the cases cited are either obviously distinguishable or consistent with the decision below.

In *Koutoris v. Konkar Intrepid Corp.*, 535 F.2d 1392 (2nd Cir. 1976), the Second Circuit Court of Appeals affirmed a dismissal at the Trial Court level of a foreign plaintiffs' suit, finding that (other than minimal bank dealings) the only United States contact in the case was a place of injury in the state of Maryland. The Court specifically noted no evidence supportive of a base of operations factual finding nor did the Court or Trial Court find substantial revenues were being derived by the defendant from United States trade. Significantly, the Court rejected a mechanical analysis of *Lauritzen, supra,* and noted with approval the Trial Court's discretion in these matters.

In *De Mateos v. Texaco, Inc.*, 562 F.2d 895 (3rd Cir. 1977), the Court of Appeals for the Third Circuit found no evidence whatsoever that the vessel in question ever earned income from voyages to the United States, and found the defendant Panamanian corporation was engaged exclusively in transportation of petroleum products between Central American countries. Plain-

tiff's decedent was a Panamanian seaman injured on a voyage between Honduras and Costa Rica and had never been to the United States aboard one of the defendant's vessels. The Court found the base of operations factor completely inapplicable to the analysis of the case.

In *Chirinos de Alvarez v. Creole Petroleum Corp.*, 613 F.2d 1240 (3rd Cir. 1980) four Venezuelan workers had died on a Venezuelan crew launch on inland Venezuelan waters, which the vessel in question never left. The Court specifically found the only contact with the United States was ownership of the launch by a United States corporation which since the 1920's had operated exclusively within the country of Venezuela. Plaintiffs in the case conceded that Venezuela was the most convenient forum for the case to be tried. It is not readily apparent to respondents that the issues in that case have any significant relationship to the issues presented in the case at bar. In *Morewitz v. Andros Compania Maritima, S.A.*, 614 F.2d 379 (4th Cir. 1980), the case was likewise inapposite to any issue presented in the case at bar. In that case, there was absolutely no evidence presented giving rise to a factual finding of base of operations in the United States nor the deriving of substantial revenue from United States trade, and in fact the only jurisdictional claim made by plaintiff was that he had a valid wage claim under United States law.

Although *Fitzgerald v. Liberian S/T CHRYSSI P GOULANDRIS*, 582 F.2d 312 (4th Cir. 1978), factually

involved a single United States contact being the place of execution of a contract, the case with regard to the issue presented herein is entirely consistent, and in fact was cited by the Court of Appeals below. In *Fitzgerald, supra*, the Court of Appeals for the Fourth Circuit reviewed the record in light of the findings of fact by the Trial Judge, and held that his analysis of the finding concerning base of operations would not be disturbed under the "clearly erroneous" standard.

Therefore, the conflicts perceived by petitioners are nonexistent, and the Petition should be denied.

VII.

Certiorari Should Be Denied In This Case Because The Peculiar Facts Herein Would Warrant The Application Of United States Law In Any Event Pursuant To Either Greek Or Liberian Legal Principles And This Case Is Thereby An Inappropriate Vehicle With Which To Analyze The Issues Presented.

The case at bar comes before the Court in a unique procedural framework, there having been conducted a full trial on the merits which included the presentation of expert testimony on the issue of foreign law. The petitioners did not utilize the provisions of either 28 U.S.C. §1292(a)(3) or 28 U.S.C. §1292(b) in order to have the issue of jurisdiction settled prior to a full trial

on the merits. At the trial on the merits, respondents presented the expert testimony of Professor A. N. Yiannopoulos, head of the Department of Admiralty of Tulane University in New Orleans, Louisiana. Both the testimony of Professor Yiannopoulos and the circumstances of the case at bar indicate that the United States substantive law would have been applied in this controversy even had the Trial Court not found facts sufficient for the direct application of United States law by virtue of petitioners' base of operations in the United States and substantial source of income derived from United States trade.

Professor Yiannopoulos testified as an expert in the field of Greek law and foreign and comparative law, and concluded that under Greek conflict principles United States law would have been applied to the case at bar in any event. [R. 76]. Professor Yiannopoulos testified that the principle of *lex locus delicti* is recognized in Greece and applies in maritime situations, and further testified that the law of the flag principle is only applicable in Greece to controversies involving real rights on a vessel, as opposed to personal injuries. [R. 77].

Professor Yiannopoulos testified that a seaman in Greece has an option of bringing an action *ex delicto* for tort against his employer or pursuing his workman's compensation remedy. [R. 80]. Professor Yiannopoulos testified that if the action were pursued by a sea-

man *ex delicto*, and "if there was a tort occurring in a foreign country, the Greek Court would be applying the law of that country under the rule of conflict of law that is in the Civil Code." [R. 79]. The law of the place of injury, of course, in this case, is the United States. The testimony of Professor Yiannopoulos was unrebutted by the testimony of petitioners' expert in Greek law, Mr. Nicholas Domvros. Thus, after trial with expert testimony on the subject, petitioners can find no comfort with the application of United States law pursuant to the principles of Greek law.

Other options with regard to the application of foreign law open to the Trial Court in this case were possibly either the law of Liberia or that of Panama. The law of Liberia encompasses the general maritime law applied in the United States of America. *See, e.g., Perez v. Omnium Trader*, 174 F.Supp. 876 (D.C. La. 1959). While there was no expert testimony offered as to the applicability *vel non* of either the law of Liberia or that of Panama, the procedure utilized in the United States District Courts is to assume the similarity of foreign law to that of the law of the United States after disposition of jurisdictional questions in absence of proof to the contrary. Gilmore and Black, *The Law of Admiralty*, 478 (2d ed. 1975) states:

> The reported cases suggest that our courts, at least in this context, are willing to assume that the maritime law of most foreign countries is

> the same as the maritime law of the United States. Thus, unless counsel for defendant is in a position to prove the contrary, the court's decision to apply the law of Greece or Norway or Hong Kong can be tantamount to a decision that the plaintiff is entitled to relief under the maritime law of the United States.

In the case of *Kearney v. Savannah Foods and Industries, Inc.*, 350 F.Supp. 85 (S.D. Ga. 1972), a District Court specifically addressed the problem of proving foreign law, and stated:

> Foreign law is not judicially noticed by Federal Courts. It must be pleaded and proven. Benedict on Admiralty, §382. In absence of proof, the controlling law is that of the forum.[12]

On appeal, and out of an abundance of caution, respondents argued that even if the Trial Court was incorrect in applying United States law to this controversy by virtue of its findings of fact with regard to petitioners, nevertheless a Greek Court would apply United States law to this controversy on the basis of its firmly entrenched rule that the law of the place of the tort governs. The Court of Appeals below specifically deferred judgment on this issue[13] in light of its holding

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12 350 F.Supp. 89 [citations omitted].

13 628 F.Supp. 318.

which is the subject of this Petition. Inasmuch as United States law from the face of the record would apparently apply to this controversy after a full trial on the merits in any event, respondents respectfully suggest to the Court that the case at bar is less than an appropriate vehicle for this Court to further discuss the principles of *Lauritzen, supra, Romero, supra,* and *Hellenic Lines, Ltd., supra.*

Accordingly, certiorari ought be denied.[14]

CONCLUSION

The decision of the Fifth Circuit Court of Appeals in the case below was very simply strictly limited to a finding that the Trial Court was not clearly erroneous in its findings of fact that petitioners maintained a substantial base of operations in the United States and derived substantial revenue from United States trade, freight

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14 Nevertheless, petitioners inexplicably ask that this court find Greek law applies to this controversy and transfer this matter to a Greek Court (presumably for the application of United States law) on *forum non conveniens* grounds. [Petition, p. 21, note 11]. This extraordinary request on the part of petitioners comes after a complete and extensive trial on the merits, including the presentation of fact and expert testimony by all parties, and after petitioners themselves participated in the taking of trial depositions in the Republic of Greece, all without petitioners ever attempting to utilize either statutory or extraordinary review procedures for the *forum non conveniens* determination made in advance of trial. *See, e.g., Gkiafis v. S/S YIOSONAS,* 387 F.2d 460 (4th Cir. 1967) and *Conte v. Flota Mercante,* 277 F.2d 664 (2nd Cir. 1960).

and charter hire such that the application of United States law could be made pursuant to *Hellenic Lines, Ltd., supra.* Despite allegations to the contrary, petitioners' dispute in this entire case is a factual one, having disagreed with the findings of fact made by the Trial Court based on all of the evidence presented. Petitioners have carried their factual dispute to the Court of Appeals for the Fifth Circuit, and now, purely and simply, attempt to argue their factual dispute for a third time before this Court. The decision of the Court of Appeals below, addressing itself to the very special fact situation of this case, neither conflicts with the decisions of this Court, the decisions of the Fifth Circuit, nor the decisions of any other Court of Appeals. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to United States Supreme Court Rule 28.3, all counsel of record herein have been served with three (3) copies each of this Opposition to the Petition by depositing the same in the United States mail, first class postage prepaid, properly addressed to counsel, at their office address.

PAUL H. DUE'